

REGULAR MEETING MINUTES
WINDSOR INLAND WETLANDS & WATERCOURSES COMMISSION
TUESDAY DECEMBER 5TH, 2023 7:00PM
HYBRID MEETING – COUNCIL CHAMBERS AND ONLINE
 Online webinar: <https://us02web.zoom.us/j/85435818689>

Chairman Morando called the meeting to order at 7:02 p.m.

1. ROLL CALL

Chairman Morando, Secretary Towers, and Commissioners S. Fraysier, C. Elkins, R. Williams, K. Elder, D. DeCarlo and alternate Jeff Adamson.

Also present was Wetland Agent, Chloe Thompson

2. PUBLIC COMMUNICATIONS (3-minute limit on items other than Public Hearings) – None; communications closed at 7:04pm.

3. BUSINESS MEETING

○ **MINUTES**

Commissioner Towers made a **motion to approve the minutes for November 8th**. Commissioner Elder seconded the motion. **Vote 8-0-0**

○ **OLD BUSINESS**

- Application 23-183: 55 Baker Hollow Road, Alford Associates Inc. – Two Distribution Warehouses

Christian Alford, P.E. of Alford Associates, addressed the Commission representing the application. George Logan, Senior Soil Scientist from REMA was also present.

C. Alford addressed a comment from the previous meeting regarding a potential vernal pool on the western portion of the site, stating that G. Logan had additional material to present. G. Logan presented pictures of this area taken in March of 2018. G. Logan stated that throughout site inspections spanning two years, he did not identify any vernal pool obligate species. G. Logan explained that this feature was likely man-made. Commissioner Towers asked if this was near the proposed piping into the wetlands. C. Alford said that this was not the location; the piping will be to the east.

Chairman Morando asked if there were any responses to the Engineering Department's review comments. C. Alford stated that for comment #3, they will be submitting a DEEP General Permit application. C. Alford said, referring to comment #4, that a stormwater report was submitted with flow calculations and they are reducing the amount of flow off the property. W.A. Thompson

stated that the comments pertained to the submitted materials, and therefore believes the Engineering Department had concerns with the current stormwater report. C. Alford stated that he wasn't sure what the specific question was, and reviewed the general details of the stormwater system. C. Alford explained that for comment #5, the impact on the wetlands will have the same impact that the previous applications have had and G. Logan has reviewed the impacts and functions of the wetlands. C. Alford added that there is one direct impact, where there is currently a pipe in the stream that will be replaced and have riprap at the outlet to prevent erosion. During construction, there is an existing woodchip berm and there will be silt fencing around the wetlands. After construction there will be a buffer between the wetlands and the developed area; there will not be a significant impact to the wetlands.

Commissioner Elder asked if the Commission has to wait for the comments to be addressed before a decision can be made. W. A. Thompson stated that she understands there were concerns with the stormwater report, however in the past the Commission has added a condition an approval stating that there shall be no significant alternations to the plans as comments are addressed. If changes occur, they must return to the Commission for a permit modification.

Commissioner Fraysier asked if there was any further plans for the property to the north. C. Alford stated that there is no current plan or agreement. Commissioner Fraysier asked if this would then be a separate parcel and application to the Commission. C. Alford confirmed this.

Commissioner Elder made a **motion to approve application 23-183: 55 Baker Hollow Road, Alford Associates Inc. – Two Distribution Warehouses**, with the following conditions:

- Standard conditions, and;
- Adequately address all staff comments that shall result in no significant changes to the impacts on wetlands or watercourses.

Commissioner Towers seconded the motion. **Vote 8-0-0**

- Application 23-184: 77 Lincoln Way, Donville Riley – Two Single Family Houses and Septic Systems

TJ Barresi, P.E. of Barresi Associates addressed the Commission representing the application. T. Barresi stated that he has received Engineering Department comments in addition to comments from the Wetland Agent and the Commission. T. Barresi stated that he has added additional details to the application including information on the location of the delineation updated in 2020 on the site plans, topography lines in the isolated wetland area, and two small vegetated depressions to offset stormwater runoff.

Commissioner Fraysier asked what the restrictions were on the vegetative easement and if this was part of the conservation easement. T. Barresi stated that this prevents clearing up to the property line and the conservation easement is different from the vegetative easement; W. A. Thompson has provided an example of a conservation easement, which will be reviewed and recorded on the land records. Commissioner Fraysier asked what the limits of the conservation easement were. T. Barresi stated that this generally surrounds the wetland boundary.

Commissioner Fraysier asked if the conservation easement included the isolated wetland. T. Barresi said that it does not.

Commissioner Towers asked if the proposed driveway was to be used for all construction equipment, or if there was going to be access from another location. T. Barresi stated that all access to these properties will be made from the proposed driveway location. Commissioner Towers asked if it was going to be paved. T. Barresi stated that the Engineering Department requires the first 20 feet to be paved, and believes the applicant will have the entire driveway paved. W.A. Thompson added that if the driveway is gravel, the conservation easement and IWWC Regulations will have stipulations on preventative measures to ensure material does not erode into the wetlands or the conservation easement boundary.

W.A. Thompson asked if the conservation easement boundary will be marked in the field before commencement of construction activity. T. Barresi stated that this can be done. W.A. Thompson stated that this is included in the provided conservation easement and is a standard practice.

Commissioner Fraysier asked when construction activity would be occurring and how long it would take. T. Barresi stated that it depends on Planning & Zoning approval but is currently planned to start in the spring and be completed in the fall.

Commissioner Fraysier made a **motion to approve application 23-184: 77 Lincoln Way, Donville Riley – Two Single Family Houses and Septic Systems**, with the following conditions:

- Standard conditions, and;
- Marking of conservation easement prior to construction.

Commissioner Elkins seconded the motion. **Vote 8-0-0**

4. Public Hearings

- Application 23-182: 500 Huckleberry Road, Town of Windsor – Landfill Wetland Restoration

Chairman Morando opened the Public Hearing at 7:38pm, and read the formal procedure.

There were no members of the public commenting on the application.

Dan Jahne, Hydrogeologist and Lynn Rae, Project Manager from Fuss and O'Neill addressed the Commission representing this application. D. Jahne explained the background details of the application, which is a project that has been ongoing for the past ~20 years (2006). D. Jahne explained that this proposal has three key points: it has the lowest impact alternative, the iron-oxide discoloration in the waterway is being addressed, and this will overall improve aesthetic quality, water quality treatment and ecological value and function of the wetland. L. Rae stated that a NDDDB request was submitted and the review reported there would not be any negative impacts on state listed species. L. Rae added that protective measures for the Eastern box turtle

have been included in the construction plans. L. Rae detailed their plans for acquiring any other required permits from DEEP and Army Corps.

L. Rae presented the existing conditions of the site, noting the locations of the seep and invasive Phragmites population. The seepage area restoration will include an armoring to control erosion and to address the iron-oxide precipitate with three feet of deposited topsoil, seeding and limestone. The Phragmites population will be treated, with a wetland area of ~3.3 acres. The limestone will increase the pH of the soil and ground water to address the iron-oxide while the other fill will restore and protect the area from previous and future erosion. The seepage area will be accessed through existing trails, using low impact equipment to transport material. L. Rae stated that a three-year success period will be established for a mechanical and chemical treatment of the Phragmites population occurring in the early spring and winter. The “marsh master” will mow the Phragmites, which is designed for low impact and will not significantly compress the soil. Mowing will occur on the perimeter of the water, as this species does not survive in deeper waters. L. Rae stated that a DEEP Aquatic Herbicide Permit will be obtained yearly, and a copy will be sent to the Wetland Agent.

Chairman Morando asked if they have gotten any feedback from DEEP. D. Jahne stated that since the previous application this has been discussed and agreed upon in an effort to meet their requirements.

Commissioner Fraysier asked where the access points were. L. Rae stated that there will be two access points; one for the Phragmites marsh-master, and another to get material and equipment to the seepage area. The marsh-master will travel through Northwest Park. Currently established trails and roads will be used to access both locations.

Commissioner Fraysier asked what the timeframe was for construction. L. Rae stated estimated beginning in January as they must wait until the ground is frozen and obtain all necessary permits before commencement.

Chairman Morando asked if there were any members of the public wishing to speak in support of, opposed, or neither in support or opposed. There was no comment from members of the public.

Commissioner Elder made a **motion to approve application 23-182: 500 Huckleberry Road, Town of Windsor – Landfill Wetland Restoration** with the following conditions:

- Standard conditions and;
- A copy of the yearly DEEP Aquatic Herbicide permit be provided to the Wetland Agent.

Commissioner Fraysier seconded the motion. **Vote 8-0-0**

5. Show-Cause Hearings

○ Violation 23-115: 4 Walters Way, Thomas DeFranzo – Cease & Desist Order

W.A. Thompson stated that Tom DeFranzo has not submitted any material on the existing conditions as requested by the Commission at the September meeting to address the enforcement order. W.A. Thompson added that she notified T. DeFranzo via email, that the procedure for issuing a citation (fines) would be followed if materials were not going to be submitted again in preparation for this month's meeting.

George Logan, Senior Soil Scientist from REMA, was present stating he was hired to conduct a wetland delineation for T. DeFranzo. G. Logan stated that the delineation has been completed, but the flagging has not yet been surveyed to be prepared on a site plan. G. Logan added that all wetlands have been delineated within 150 feet of the newly constructed barn.

Commissioner DeCarlo expressed frustration with the lack of material from T. DeFranzo and asked what the ability was to issue fines. W.A. Thompson stated that the language Cease and Desist Order allows for the issuance of citations immediately as the requirements designated by the Commission at the show-cause hearing in September are not being satisfied. Commissioner DeCarlo asked for information on the Building Department's permits. W.A. Thompson stated that Building Permits were not obtained, and T. DeFranzo has received a "Stop Work Order" from the Building Department as well; a permit has yet been applied for.

Commissioner Elkins asked if the amount of fines varies for each property. W.A. Thompson stated that there is a tiered system of fines depending on the severity of risk or damage to wetlands and/or watercourses, with the lowest of \$25 to \$750 per day. Commissioner Towers stated that while she understands Commissioners' frustrations, but G. Logan has delineated the wetlands therefore some progress has been made, and suggested waiting until the next meeting to issue fines. A general conversation took place regarding the timeline and the consideration of imposing fines. Commissioner Elder restated Commissioner Towers' comments that some progress has been made, as G. Logan reported that the wetlands have been delineated. DeCarlo stated that the Commission has been waiting for materials for the last two meetings, and proper notification was given.

Chairman Morando asked G. Logan how much time is needed to survey the delineated wetlands. G. Logan stated that this should take about four or five days, but given that Alford Associates is already aware of this, the survey should be completed this week. G. Logan added that based on his observations, the shed/barn was not constructed in existing wetlands, but is surrounded by them. W.A. Thompson asked if the location of this structure, which is outside of wetlands as they exist today, was once wetlands before construction activity. G. Logan stated that this was, "hard to tell". G. Logan said that he conducted delineations previously on this property, of which may not represent the existing conditions and boundaries of the wetlands. G. Logan added that this was likely part of the reason for the Commission's request for an updated delineation, as work may have been done previously that altered the wetland boundaries. G. Logan stated that he has been very busy, and may have delayed the process of having updated plans for the Commission.

Commissioner DeCarlo asked G. Logan when he was hired to delineate the wetlands. G. Logan stated that he was notified in November, just prior to the last meeting. Commissioner Fraysier

asked what specifically was requested in September. W.A. Thompson said the Commission requested the wetlands be re-surveyed, a site plan be prepared to show the existing conditions of the property, and any other information on the activity conducted so far within 150 feet of wetlands or watercourses. Chairman Morando asked how long the daily fines would occur. W.A. Thompson stated that fines would be issued daily until the requested information is submitted.

Commissioner DeCarlo made a **motion to proceed with the issuance of citations for violation 23-115: 4 Walters Way, Thomas DeFranzo – Cease & Desist Order**. Commissioner Elkins seconded the motion, and it passed. **Vote 4-3-1. (Voted against: Chairman Morando, Commissioners Towers and Elder, Commissioner Fraysier Abstained)**

○ Violation 23-122: 364 Addison Road, Mark Scott – Cease & Desist Order

W.A. Thompson notified the Commission of the Cease and Desist Order issued to Mark Scott and any property owners and/or managers of this property. W.A. Thompson explained that this was issued after she observed clear-cutting, grubbing, filling, excavating, and the deposition of asphalt and road millings within or adjacent to wetlands. W.A. Thompson stated that the property owners have submitted a wetland report and a letter regarding the matter in response. W.A. Thompson added that according to the Town's wetland mapping, some of this activity occurred within wetlands. With the newly submitted wetland delineation, it is unclear whether or not this activity actually occurred in delineated wetlands. In review of the submitted materials, W.A. Thompson stated that the wetland report itself is very brief, only listing the USDA soil type definitions and included a generalized hand sketched map. There were no reports on the vegetation, functions and values, etc. W.A. Thompson referred to the State's definition of "clean fill", which does not include asphalt or millings that are smaller than 4 inches in diameter. W.A. Thompson added that on-site observations showed this activity including the deposition of millings occurred directly adjacent to or within wetlands and therefore believes the material should be removed and the area should be restored to the previously existing conditions.

Mark and Alecia Scott addressed the Commission as the property owners. M. Scott stated that they recently purchased the property, and apologized. A. Scott stated that they had plans to prepare a site plan for their intended use of the property. A. Scott added that silt fence has been added around the disturbed areas as instructed and Denno Land Surveying & Consulting has been hired to create a site plan.

Chairman Morando asked when the property was purchased, if it was their first purchase and if there was any notification given to them about the wetlands on the property. M. Scott and A. Scott stated that this was their first purchase of vacant land (previously purchased a house) in March of this year, and they were aware of the wetlands on the property, but did not were not aware of the boundaries as they are currently flagged. W.A. Thompson stated that when she first observed the activity the wetland boundaries were flagged. The wetland delineation report was conducted in September of 2023. Chairman Morando asked if this delineation was conducted at the instruction of the property owners. A. Scott confirmed this.

Chairman Morando asked what information is needed from the property owners to address the violation. W.A. Thompson stated that there should be some type of site survey prepared with the clearing limits, location of deposited material and an evaluation of the impacts. The property owners should propose a restoration plan, possibly with a site plan application to include their intended use of the property.

Chairman Morando stated that he understood there was debris already on the property at the time of purchase. W.A. Thompson said the pieces asphalt that were on the property edge were relocated and used as fill. M. Scott and A. Scott stated that there was a lot of garbage removed, and the only thing deposited was the asphalt. Chairman Morando asked about the road millings. M. Scott stated that the road millings were not there; they acquired the millings and used them to fill the slope to remove cut trees.

Chairman Morando asked if it were possible to have the plans prepared prior to the January meeting. A. Scott stated that she would have to discuss the timeline with her land surveyor. Chairman Morando instructed to remain in contact with the Wetland Agent.

Commissioner DeCarlo asked to clarify what exactly should be on the plans. W.A. Thompson stated that this is contingent in part on the Commissioners' perspective and the extent to which property owners can ready themselves for the upcoming meeting. Chairman Morando stated he would like to see a restoration plan. Commissioner DeCarlo proposed a site plan including the wetland delineation and the extent and limits of the work conducted so far. W.A. Thompson explained to the property owners that they would have to prepare a restoration plan for the Commission to review. S. Scott explained that a site plan could accomplish both the remediation and the intended use of the property in the future. Commissioner Elder stated that often site plan development can take a longer time; therefore it may be better to prioritize the restoration plans before moving into a comprehensive site plan for the final intended use. W.A. Thompson suggested that if the site plan was more of a concept plan, this might be more feasible to address the restoration needed.

S. Scott asked if the asphalt could be removed at this point to proceed with restoration. W.A. Thompson stated that the Commission would need more information on the existing conditions before they can approve any restoration efforts. Commissioner DeCarlo asked if the provided wetland report was sufficient to include with the restoration proposal. W.A. Thompson restated her review; the wetland report provided was not comprehensive. This wetland is directly adjacent to Mill Brook, which is a major watershed in Windsor. Commissioner Elder stated that a surveyed plan is needed to move forward with both a restoration plan and a site plan. This should include the wetland limits, deposited material limits, topography and clearing limits. W.A. Thompson added that a wetland/soil scientist would be able to re-evaluate any impacts that have occurred. S. Scott asked what work could be done now. W.A. Thompson and Commissioner DeCarlo explained that the Commission needs this information to be able to approve any further activity.

Commissioner DeCarlo made a **motion to affirm the issuance of the Cease and Desist Order, remaining in effect for violation 23-122: 364 Addison Road, Mark Scott**. Commissioner Elder seconded the motion. **Vote 8-0-0**

6. Agent Action

Wetland Agent Thompson reviewed the following agent approved applications:

- AA23-185: 21 Willowcrest Dr. – 16' x 22' Deck
- AA23-186: 2 Fitzmaurice Cir. – 14' x 40' Addition
- AA23-187: 601 Bricklayer Rd. – Accessory Apartment
- AA23-188: 108 Custer Dr. – 12' x 8' Deck

7. Agent Reports

- Establishing Protocol
 - Conservation Easements (Memo to IWWC – 11.29.23)

W.A. Thompson reviewed the memo she sent out and looked for feedback on the proposal to develop an official protocol for establishing conservation easements for new residential or any other development where this may be an effective tool for protecting inland wetlands and watercourses. W.A. Thompson wrote an attorney reviewed template for future conservation easements and included this with the memo. The Commission has approved a few recent applications including proposed conservation easements, but a formal process for establishing and recording such does not currently exist. This will help inform homeowners of regulated activity occurring on their property if they have wetlands, watercourses or upland review area; there is currently no requirement to inform homebuyers directly of the regulations. Confusion on the exact steps to record this easement occurred with a recent approval; therefore creating a process would ensure the applicants complete the formal and legal steps for establishment.

Commissioner Fraysier asked if this could become a condition of an approval. W.A. Thompson said a condition could be to follow the proper protocol, of which the applicant would then have something to reference.

- Quality of Historical Wetland Delineations & Reports

W.A. Thompson stated that the Commission has been receiving a few applications with wetland delineations that were conducted 20+ years ago, which may not accurately depict the existing conditions. W.A. Thompson stated that she could not find any information in the state statutes or regulations from other towns where there is an “expiration date” for delineations. Commissioner Elder stated that in his experience, after three or five years, a soil scientist will have to re-inspect the delineation and certify that it reflects the existing conditions. Chairman Morando stated that he was unsure on how the Commission would regulate this. W.A. Thompson agreed, but perhaps exploring more information on this might help the Commission require more information when

considering applications with older delineations. W.A. Thompson asked Commissioner Elder to send her any information on the towns where he has experienced this requirement. Commissioner Towers stated that it is very reasonable to expect environmental conditions to change over a 20-year period.

8. Petitions From Commissioners

9. Adjournment

Commissioner Towers made a motion to adjourn at 9:42 p.m. Commissioner Williams seconded the motion. Vote 8-0-0

I certify that these minutes were approved on

Marlene Towers, Secretary

Inland Wetlands and Watercourses Commission